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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,932	11/26/2003	Saravanakumar V. Tiruthani	2003P00078US	9779

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Attn: Elsa Keller, Legal Administrator
Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, NJ 08830

EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2446

MAIL DATE	DELIVERY MODE
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12/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/723,932	Applicant(s) TIRUTHANI, SARAVANAKUMAR V.	
	Examiner Joseph E. Avellino	Art Unit 2446	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-15 are presented for examination; claims 1, 5, and 11 independent.
2. In light of the Petition filed August 5, 2008, decided November 6, 2008, the abandonment is hereby withdrawn.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 5, 2008 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 1, 3 and 4 and rejected under 35 U.S.C. 102(b) as being anticipated by Berman (USPN 5,754,831, which incorporates by reference, see col. 5, lines 15-20, Application no. 08/641,599, now Patent no. 5,845,124, also to Berman, hereinafter '124) in view of Papaefstathiou (USPN 6,996,517).

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4. Berman discloses a telecommunications method comprising:

defining one or more system components as corresponding distributed modules (i.e. network elements 310-340 being defined as associated data records representing the network elements) using a module definition language (the Office construes the phrase "module definition language" as any text, script, program, etc. which can be utilized in order to simulate, emulate, or model a particular element) (i.e. defining network elements) (col. 6, line 50 to col. 7, line 9 and also disclosed in Application no. 08/641,599, Patent no. 5,845,124: col. 2, lines 20-29);

defining one or more system parameters (i.e. characteristics of network elements) for said one or more system components) (col. 6, line 50 to col. 7, line 9);

implementing the function defined for the system component (i.e. "as message traverses network model, it experiences mathematically computed delays") (col. 8, line 51 to col. 9, line 13); and

logging a result of said implementing (i.e. "a timestamp is again generated...an average timestamp is determined") (col. 8, line 51 to col. 9, line 13).

Berman does not explicitly disclose that the module definition language comprising a tag and attributes (the specific types of attributes are considered non-functional descriptive language and therefore hold no patentable weight). In analogous art, Papaefstathiou discloses another modeling system which discloses defining a device (i.e. system_name="pc_cluster") by using a plurality of script tags including a name and port (<computer name="pc.sub.--node" node="1"> <network name="myrinet" port="1">) (col. 14, lines 5-60). It would have been obvious to one of ordinary skill in

the art to combine the teaching of Berman with the modeling configuration of Papaefstathiou in order to provide a framework for defining resource usage data that can be used and reused by different models and tools as supported by Papaefstathiou (col. 14, lines 1-3).

Papaefstathiou does not explicitly disclose the use of a thread tag, however since XML is an extensible markup language, one of ordinary skill in the art would clearly have the skill to define and include a thread tag to tailor the configuration to the user's liking.

5. Referring to claims 3 and 4, Berman discloses the invention substantively as described in claim 1. Berman does not explicitly state that the predetermined functions include CPU load and delay, however it is well known for modeling purposes that CPU functionalities can be implemented in a modeling environment. By this rationale, "Official Notice" is taken that both the features and advantages of providing for modeling CPU load and delay is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Berman in order to model parameters of the CPU of the various networking elements since Berman discloses that the parameters can include element speeds, capacities, or *any suitable measurable characteristics of the same* (col. 6, lines 57-60). This would motivate one of ordinary skill in the art to include these modeling parameters in the system of Berman in order to implement a more efficient system customizable to the user.

Claims 2, and 5-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berman- Papaefstathiou as applied above, and in view of Takahashi et al. (USPN 7,031,895) (hereinafter Takahashi).

6. Referring to claim 2, Berman discloses the invention substantively as described in claim 1. Berman does not explicitly state that the defining steps are implemented on a plurality of systems. In analogous art, Takahashi discloses another telecommunications method which implements defining components and defining functions are implemented on a plurality of systems (i.e. multiple model generators 51a-c implemented in networks a-c) (Figure 8; col. 15, lines 4-21). It would have been obvious to one of ordinary skill in the art to combine the teaching of Takahashi with Berman in order to provide simulations based on actual results of the network rather than arbitrary values assigned by the user, thereby providing a real basis for the network simulation and providing more reasonable results for the network model.

7. Claims 5 and 6 are rejected for similar reasons as stated above.

8. Referring to claim 7, Papaefstathiou discloses the use of XML (col. 14).

9. Claims 8-11 are rejected for similar reasons as stated above.

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10. Referring to claim 12, Berman (Patent no. 5,845,124 incorporated by reference) discloses a directory defining a name and parameters of other modules being modeled by the system which a given model needs to work with (i.e. define interconnections between network elements that are visually implied but not explicitly shown) (Berman '124, Figure 4; col. 8, lines 15-25). Furthermore Takahashi discloses the use of a path appliance list which defines the list of elements within the path (e.g. abstract).

11. Referring to claim 13, Berman discloses a loop module for modeling a non-real time component (Berman, Patent no. 5,845,124 incorporated by reference into Berman discloses modeling a client machine session which conducts 5 transactions a minute, thereby looping and issuing a new transaction every twenty seconds: Fig. 9A, attributes 900).

12. Claims 14 and 15 are rejected for similar reasons as stated above.

Response to Arguments

13. Applicant's arguments filed August 5, 2008 have been fully considered but they are moot in view of the new rejections presented above.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey C. Pwu can be reached on (571)272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph E. Avellino/
Primary Examiner, Art Unit 2446

Notice of References Cited	Application/Control No. 10/723,932	Applicant(s)/Patent Under Reexamination TIRUTHANI, SARAVANAKUMAR	
	Examiner Joseph E. Avellino	Art Unit 2446	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,925,431 B1	08-2005	Papaefstathiou, Efstathios	703/17
*	B	US-6,996,517 B1	02-2006	Papaefstathiou, Efstathios	703/22
*	C	US-7,103,526 B2	09-2006	Allen et al.	703/21
	D	US-			
	E	US-			
	F	US-			
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	I	US-			
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FOREIGN PATENT DOCUMENTS

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	N					
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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
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	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.